

1 HB120  
2 78983-3  
3 By Representative Newton (C)  
4 RFD: Judiciary  
5 First Read: 10-JAN-06  
6 PFD: 01/05/2006

SYNOPSIS: Under existing law, a person who knowingly and unlawfully enters or remains in a dwelling with the intent to commit a crime therein and is armed with a deadly weapon or dangerous instrument while either entering the dwelling or in immediate flight therefrom, is guilty of burglary in the first degree, a Class A felony. A person who enters or remains unlawfully in a building with intent to commit theft or a felony therein and is armed with a deadly weapon while either entering in the building or in immediate flight therefrom is guilty of burglary in the second degree, a Class B felony.

This bill would provide that a defendant or another participant who possesses a deadly weapon or dangerous instrument upon entry of a dwelling or building with the intent to commit a crime, or uses or threatens to use the deadly weapon or dangerous instrument against another person in the commission of a burglary or flight from the dwelling would be guilty of these crimes.

1                   Amendment 621 of the Constitution of Alabama  
2                   of 1901 prohibits a general law whose purpose or  
3                   effect would be to require a new or increased  
4                   expenditure of local funds from becoming effective  
5                   with regard to a local governmental entity without  
6                   enactment by a 2/3 vote unless: it comes within one  
7                   of a number of specified exceptions; it is approved  
8                   by the affected entity; or the Legislature  
9                   appropriates funds, or provides a local source of  
10                  revenue, to the entity for the purpose.

11                  The purpose or effect of this bill would be  
12                  to require a new or increased expenditure of local  
13                  funds within the meaning of Amendment 621. However,  
14                  the bill does not require approval of a local  
15                  governmental entity or enactment by a 2/3 vote to  
16                  become effective because it comes within one of the  
17                  specified exceptions contained in Amendment 621.

18  
19                               A BILL  
20                               TO BE ENTITLED  
21                               AN ACT  
22

23                  To amend Sections 13A-7-5 and 13A-7-6, Code of  
24                  Alabama 1975, relating to the crime of burglary in the first  
25                  degree and the second degree; to provide that a defendant, or  
26                  another participant who possesses a deadly weapon or dangerous  
27                  instrument upon entry of a dwelling or building, or uses or

1 threatens to use the deadly weapon or dangerous instrument  
2 against another person in the commission of a burglary or  
3 flight therefrom would be guilty of these crimes; and in  
4 connection therewith would have as its purpose or effect the  
5 requirement of a new or increased expenditure of local funds  
6 within the meaning of Amendment 621 of the Constitution of  
7 Alabama of 1901; and in connection therewith would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds within the meaning of Amendment 621  
10 of the Constitution of Alabama of 1901.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 13A-7-5 and 13A-7-6, Code of  
13 Alabama 1975, is amended to read as follows:

14 "§13A-7-5.

15 "(a) A person commits the crime of burglary in the  
16 first degree if he or she knowingly and unlawfully enters or  
17 remains unlawfully in a dwelling with intent to commit a crime  
18 therein, and, if, in effecting entry or while in dwelling or  
19 in immediate flight therefrom, ~~he~~ the person or another  
20 participant in the crime:

21 "(1) Is armed with explosives ~~or a deadly weapon~~; or

22 "(2) Causes physical injury to any person who is not  
23 a participant in the crime; or

24 "~~Uses or threatens the immediate use of a~~  
25 ~~dangerous instrument~~ In effecting entry, is armed with a  
26 deadly weapon or dangerous instrument or, while in the  
27 dwelling or immediate flight from the dwelling, uses or

1 threatens the immediate use of a deadly weapon or dangerous  
2 instrument against another person. The use of or threatened  
3 use of a deadly weapon or dangerous instrument does not  
4 include the mere acquisition of a deadly weapon or dangerous  
5 instrument during the burglary.

6 "(b) Burglary in the first degree is a Class A  
7 felony.

8 "§13A-7-6.

9 "(a) A person commits the crime of burglary in the  
10 second degree if he or she knowingly enters or remains  
11 unlawfully in a building with intent to commit theft or a  
12 felony therein and, if in effecting entry or while in the  
13 building or in immediate flight therefrom, ~~he~~ the person or  
14 another participant in the crime:

15 "(1) Is armed with explosives ~~or a deadly weapon~~; or

16 "(2) Causes physical injury to any person who is not  
17 a participant in the crime; or

18 "~~(3) Uses or threatens the immediate use of a~~  
19 ~~dangerous instrument~~ In effecting entry, is armed with a  
20 deadly weapon or dangerous instrument or, while in the  
21 building or in immediate flight from the building, uses or  
22 threatens the immediate use of a deadly weapon or dangerous  
23 instrument against another person. The use of or threatened  
24 use of a deadly weapon or dangerous instrument does not  
25 include the mere acquisition of a deadly weapon or dangerous  
26 instrument during the burglary.

1           "(b) In the alternative to subsection (a) of this  
2 section, a person commits the crime of burglary in the second  
3 degree if he or she unlawfully enters a lawfully occupied  
4 dwelling-house with intent to commit a theft or a felony  
5 therein.

6           "(c) Burglary in the second degree is a Class B  
7 felony."

8           Section 2. Although this bill would have as its  
9 purpose or effect the requirement of a new or increased  
10 expenditure of local funds, the bill is excluded from further  
11 requirements and application under Amendment 621 because the  
12 bill defines a new crime or amends the definition of an  
13 existing crime.

14           Section 3. This act shall become effective on the  
15 first day of the third month following its passage and  
16 approval by the Governor, or its otherwise becoming law.